

#### **IV. Remarks**

##### **A. Information Disclosure Statement**

An initialed PTO 1449 form was attached to the Official Action, however certain references were crossed out as having not been considered by the Examiner. The Action does not state why these references were not considered. Examiner Carl Friedman suggested to the undersigned that this be brought to the Examiner's attention in this response for correction or clarification.

Applicants request that these crossed out references be considered by the Examiner. In the event that Applicant has not complied with some procedural nuance, resulting in the references not being considered, Applicants request that they be afforded the opportunity to correct any such mistake prior to issuance of the next Action or a Notice of Allowance, as this present Action did not afford the Applicants the opportunity to address this matter.

##### **B. Summary of Amendments**

Claim 1 has been amended to better recite "a front and rear faces" as "front and rear faces."

Claim 1 has also been amended to clarify the type of installation in which the recited panel is used, and thus further defining the shape of the panel such that the rear face includes a portion proximate to the bottom end of said rear face resting upon a front face of said second siding panel. This feature is shown in, for example, FIGS. 5 and 7.

Claim 4 has been amended to add a period (.) at the end thereof.

Claim 7 has been amended to correct an error reciting "a planar face" twice.

Claim 9 has been amended to better recite "a first and a second siding panels" as "first and second siding panels" and to better recite "a front and rear faces" as "front and rear faces."

Claim 17 has been amended to better recite “a first and second siding panels” as “first and second siding panels” and “a front and rear faces” as “front and rear faces.”

Claim 17 has also been amended to clarify the attachment method, reciting that the rear face of the siding panel includes a portion proximate to a bottom end of said rear face resting upon a front face of said second siding panel, as shown in, for example, FIGS. 5 and 7.

Claim 21 has been amended to correct “nails fasteners” to “fasteners.”

Claim 25 has been amended to better recite “a front and rear faces” as “front and rear faces.”

Claim 27 has been amended to recite that the siding panel is a “clapboard” siding panel.

New Claim 28 has been added, examination of which is respectfully requested.

**C. Allowable Subject Matter**

Applicant is grateful to the Examiner for allowing Claims 9-16, 25 and 26 and for recognizing the allowable subject matter in Claims 5, 8 and 20.

**D. Claim Objection**

The Action objects to Claim 4 for omitting a period -- . -- at the end thereof. Claim 4 has been amended to correct this informality.

**E. Rejection under 35 U.S.C. §112**

The Action rejects Claims 1, 5, 7, 10, 16, 17, 26 and 27 as failing to comply with the enablement requirement, §112, ¶1. The Examiner states that it cannot be determined how “flush” the “substantially flush” member must be to fall within the metes and bounds of the claim, etc.

Initially, Applicant questions whether the Examiner intended to reject these claims as being indefinite under 35 U.S.C. §112, ¶2 as opposed to lack of enablement of §112, ¶1. An indefiniteness rejection is the more expected §112 rejection to relative terminology such as “about” or “substantially.”

There is nothing inherently wrong with using relative terminology and its use is a “standard tool[] in claim drafting.” MPEP 2173.05(b) The MPEP provides that the acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. Id.

The Background of the Invention section explains that a gap formed between the rear surface of a siding panel and the wall in a clapboard assembly allows the fasteners that are driven through the panel to apply a bending stress to the panel, which can lead to cracking. The nails entering this gap between the panel and the wall also tend to create puncture fractures, much like a bullet exiting an object into open space. Cracking and puncture marks can lead to water penetration, weakening the holding strength of the fasteners and the product life.

Turning to Claim 1, Claim 1 recites that the “at least a portion of said [first] area [proximate to a top end of said rear face] sits substantially flush with a portion of a vertical wall.” The specification describes one embodiment where the first area is shaped so that a substantially flush fit can be made between the wall and this first area. By way of example, the specification describes the desired combined angle “ $\alpha$ ” plus “ $\beta$ ” (see, e.g., FIG 4) be at or around 180°. (¶0014) This creates a panel that sits substantially flush with a wall, reducing or eliminating nail punctures and cracking and a secure nailing face that does not subject the panel to, or that reduces, bending stresses. (¶¶0016; 0020)

From this guidance, it is respectfully submitted that one of ordinary skill would understand what is claimed, in light of the specification in compliance with §112, ¶1 and that the claimed siding panel is enabled in compliance with §112, ¶2.

These arguments apply equally to Claim 5 (reciting “a protruding area that extends substantially along the entire length of said rear face”), Claim 7 (reciting “planar face that is disposed to sit substantially flush with said portion of said vertical wall”), Claim 10 (reciting “said reinforced area extends substantially along the entire length of said rear face”), Claim 17 (reciting “a portion of said area sits substantially flush with a portion of said vertical wall”), Claim 26 (reciting “a planar face that is disposed to sit substantially flush with said portion”) and Claim 27 (reciting “in substantially flush contact with said vertical wall”).

In view of the foregoing, reconsideration and withdrawal of the rejection of Claim 1, 5, 7, 10, 16, 17, 26 and 27 are respectfully requested.

**F. Rejection under 35 U.S.C. §102**

The Action rejects Claims 1, 4, 6 and 27 as been anticipated by U.S. Patent No. 4,334,396 to Hagopian. Reconsideration and withdrawal of the rejection of these claims in view of the foregoing amendments and following arguments are respectfully requested.

Hagopian discloses a metal siding panel 10 having preformed nail slots 22. The panel 10 is shaped to interlock, as opposed to passively overlap, with other similarly shaped siding panels using gripping portion 18 and flange 28, which form a male/female interconnection.

Claim 1 has been amended to clarify that not only does the rear face have a first area proximate to a top end of said rear face shaped such that at least a portion of said area sits substantially flush with a portion of a vertical wall when said siding panel is secured to said vertical wall and angled to overlap at least a portion of a second siding panel secured to said vertical wall, but the rear face also includes a portion proximate to a bottom end of said rear face resting upon a front face of said second siding panel when the panel is angled to form the overlap. This amendment clarifies the type of siding panel being claimed, i.e., a siding panel that

forms an overlap with a lower siding panel as shown in FIGS. 5 and 7, for example, as opposed to an interlocking fit with an overlapped siding panel.

Turning more specifically to the disclosure of Hagopian, the siding panel 10 of Hagopian clearly does not include a portion of the rear face proximate to a bottom end of the rear face resting upon a front face of said second siding panel. Rather, the siding panel 10 includes a flange 28 that is angled to fit within gripping portion 18, as best shown in FIG. 3. No portion of the rear face of the panel 10 of Hagopian is shaped to “rest” on the front face of an overlapped panel.

For at least these reasons, it is submitted that Claim 1 and Claims 4 and 6, which depend from Claim 1, are not anticipated by the cited reference.

Claim 27 has been amended to recite that the siding panel is a “clapboard” siding panel. A “clapboard” siding panel is generally understood in the art to mean one of a series of long planks of wood or other material with edges horizontally overlapping, for covering the outer walls of buildings. Often, the bottom, overlapping edge is thicker than the top, overlapped edge.

It is submitted that the Examiner has conceded in the rejection of, for example, Claims 2, 3, 22 and 23 that Hagopian does not teach or suggest a clapboard siding panel. Indeed, a metal siding panel such as panel 10 of Hagopian that is bent to form interlocking members 18 and 28 would not be understood by those in the art to be a clapboard siding panel. In rejecting Claims 2, 3, 22, and 23, the Examiner relies on the combination of Hagopian and U.S. Patent No. 6,065,260 to Dickey, specifically to Col. 3, Lines 24-28 thereof, noting that Dickey teaches that it is known in the art to form a siding member 10 out of wood clapboard. Therefore, the Examiner concludes, it would have been obvious to form the siding member of Hagopian “out of wood clapboard material.” Applicant respectfully disagrees.

Dickey discloses a siding panel 10 that is formed of polyvinylchloride (PVC) and that, like Hagopian, is shaped to having interlocking member 18 and 24. (See FIGS. 3 and 4). The

panel 10 of Dickey, therefore, like the panel 10 of Hagopian is not a clapboard siding panel as understood in the art. Rather, the interlock mechanism of Dickey merely provides a “clapboard presentation.” (Col. 3, Line 25) Providing a “clapboard presentation” does not make the panel a “clapboard panel” as recited in the Claim 27 (just like the simulated wood grain finish of the Dickey panel does not make it a wood panel).

Further, it is highly unlikely that one of ordinary skill could make the siding panel 10 of either Hagopian or Dickey from conventional clapboard materials, such as wood or fiber cement, as suggested by the Examiner. It is relatively simple to produce the shapes of Hagopian and Dickey from a PVC or aluminum sheet extrusion or post forming processing. However, fiber cement and wood panels are not formed using these processes. Rather, these panels are either sawed or formed in press operations that likely could not form interlocking member such as shown in Hagopian and Dickey. Therefore, not only do Hagopian and Dickey not teach clapboard siding panels, there is no teaching or suggestion in either reference to modify the design of Hagopian into a clapboard siding panel and there is no reasonable expectation of success in such a combination.

For at least these reasons, it is submitted that Claim 27 is allowable over the art of record.

The Action also rejects Claims 17-19 and 21 as being anticipated by Hagopian. The installation method of Claim 17 has been amended to recite further that the rear face of the panel rests upon the front face of the second siding panel, as discussed above in connection with Claim 1. For at least the reasons set forth above in connection with Claim 1, it is submitted that Claim 17 and Claim 18-19 and 21, which depend from Claim 17, are allowable over the art of record. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

It is also submitted that Claims 19 and 21 are independently allowable over Hagopian. Both Claims 19 and 21 recite the step of driving a series of nails or fasteners through a siding panel. This step does not occur in the installation method of Hagopian, as the panel 10 of

Hagopian is provided with preformed nailing apertures 22. With preformed nailing apertures 22, fasteners need not be driven through the siding panel.

**G. Rejection under 35 U.S.C. §102**

The Action rejects Claims 2, 3, 22 and 23 as being obvious from Hagopian in view of Dickey.

Claims 2 and 3 depend from Claim 1. It is submitted that Claims 2 and 3 are allowable for at least the reasons set forth above in connection with Claim 1.

Claims 22 and 23 depend from Claims 17. It is submitted that Claims 22 and 23 are allowable for at least the reasons set forth above in connect with Claim 17.

Claims 2 and 22 each recite that the siding panel is a clapboard siding panel. As explained above in connection with Claim 27, Dickey does not disclose a clapboard siding panel, and one of ordinary skill would not, and likely could not, modify the siding panel of Hagopian as a clapboard siding panel. For at least these reasons, it is submitted that Claims 2 and 22 are independently allowable over the art of record. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

Claim 3 recites that the siding panel is a fiber cement or wood clapboard siding panel. Claim 23 recites that siding panels are fiber cement clapboard siding panels. As also explained above in connection with Claim 27, Dickey does not disclose a clapboard siding panel (fiber cement, wood or otherwise), and one of ordinary skill would not, and likely could not, modify the siding panel of Hagopian as a clapboard siding panel. For at least these reasons, it is submitted that Claims 3 and 23 are independently allowable over the art of record. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

The Action also rejects Claims 7 and 24 as being obvious from Hagopian. Claims 7 and 24 recite that a major portion of the rear face forms an angle with the vertical wall between about

1-10 degrees. The Examiner concludes that the selected angle would be an obvious matter of design choice to one of ordinary skill in the art. The Examiner then states that “perhaps a large angle would be used if there exists a need to expel water from the surface of the siding member.” Applicant respectfully disagrees. First, Hagopian appears to disclose a major portion of the rear surface of panel 10 being at a fairly large angle with respect to the wall 30. This angle appears to be 30 degrees or more. This large angle is necessitated by the need to accommodate flange member 28 for interlocking with gripping member 18 of an overlapped siding panel. This is certainly not a concern with the claimed panels of Claim 1 and Claim 17. Further, it is submitted that “1-10 degrees” is not a “large angle” as shown in Hagopian and suggested by the Examiner in the purported suggestion/motivation identified by the Examiner. Rather, this angle is relatively small and recognizes that Applicant’s top panel will rest on (not interlock with) the bottom panel in an installation. It is therefore more desirable to have a relatively small angle in order to provide this resting orientation and to facilitate the manufacturing of the panels.

For at least these reasons, it is submitted that Claims 7 and 24 are independently allowable over the art of record. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

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[VS-8855]

**V. Conclusion**

In view of the foregoing remarks and amendments, Applicant submits that this application is in condition for allowance at an early date, which action is earnestly solicited.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any excess payment that may be associated with this communication to deposit account **04-1679**.

Respectfully submitted,

Dated: \_\_\_\_\_

3/10/06

  
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**[VS-8855]**

## **II. In the Drawings**

Replacement sheets 1-5 are provided herein to replace the informal drawings filed with the application with formal drawings. The replacement sheets replace each of Figures 1-7.